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**UNITED STATES DISTRICT COURT**  
  
**CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN**  
  
**DIVISION**

JOHN BLACKBURN and DIANE BLACKBURN,

Plaintiffs,

vs.

WALMART, INC., AND DOES 1-50, inclusive,

Defendants.

Case No.: 5:18-cv-02487-DOC-SP

**PLAINTIFFS' SEPARATE**  
**STATEMENT OF ADDITIONAL**  
**UNCONTROVERTED FACTS**

Date: August 5, 2019

Time: 8:30AM

Courtroom: 9D

District Judge: David O. Carter

No.	Opposing parties statement of additional undisputed facts	Evidence
24	On September 7, 2017 Mr. Blackburn went shopping at Walmart for several items including dog food.	Deposition of Plaintiff John Richard Franklin Blackburn ("Blackburn") 42:15-16; 48:8-21 at <b>Ex. 1</b> .
25	Mr. Blackburn found two cans of Pedigree chicken flavored dog food and put them into his cart.	Blackburn, 52:12-24 at <b>Ex.1</b> .
26	Mr. Blackburn got down onto his knees and elbows in order to reach	Blackburn, 52:2-11; 53:7-23; 87:22-24 at <b>Ex.1</b>

1		back onto the bottom shelf of the display to reach a third can of dog food.	
2			
3	27	Mr. Blackburn retrieved a third can of dog food and was reading the label when he was struck in the head with a can of dog food.	Blackburn, 52:2-11 at <b>Ex. 1</b>
4			
5	28	Mr. Blackburn did not bump the display just prior to being struck with the can.	Blackburn, 56:9-15 at <b>Ex. 1</b>
6			
7	29	The impact of the dog food can falling on Mr. Blackburn's head caused Mr. Blackburn to "freeze" for an unknown period of time in a state of shock before the sensation of blood flowing down his face awakened him.	Blackburn, 57:12-58:1 at <b>Ex. 1</b>
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12	30	Mr. Blackburn then got to his feet and searched for a Walmart employee in order to get first aid.	Blackburn, 59:1-21 at <b>Ex. 1</b>
13			
14	31	Walmart employees Assistant Store Manager Dominick Garcialazo ("ASM Garcialazo"), Dominique Zarco ("Employee Zarco"), and Store Supervisor Arnold Cortez ("SS Cortez") saw Mr. Blackburn with either blood pouring from his head or blood on his person within minutes after the can fell on Mr. Blackburn's head	Deposition of Store Supervisor Arnold Cortez ("SS Cortez"), 35:20-36:3 at <b>Ex. 2</b>  Deposition of Walmart Employee Dominique Zarco ("Employee Zarco"), 17:7-11 at <b>Ex. 3</b>  Deposition of Walmart Assistant Store Manager Dominick Garcialazo ("ASM Garcialazo"), 45:7-14 at <b>Ex. 4.</b>
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22	32	ASM Garcialazo asked SS Cortez to go take pictures of the incident scene and assist with the investigation.	SS Cortez, 25:1-7 at <b>Ex. 2</b>  ASM Garcialazo, 38:1-5 at <b>Ex. 4</b>
23			
24			
25	33	As part of his role in the investigation, Store Supervisor Cortez inspected the scene where the can had struck Mr. Blackburn and found drops of blood on the ground.	SS Cortez, 32:7-12 at <b>Ex. 2</b>
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27			
28			

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1	34	In the aisle where the incident occurred, Store Supervisor Cortez found a can with a dent and blood on it.	SS Cortez, 30:7- 31:7 at <b>Ex. 2</b>  Photographs of can of dog food that struck Mr. Blackburn— <b>Ex. 5</b>
2	35	Store supervisor Cortez brought the can to ASM Garcialazo and they put the can in a ziplock bag and saved it in the manager's office.	SS Cortez, 33:1-16 at <b>Ex. 2</b>
3	36	The can in question has since gone missing and it has not been found.	SS Cortez, 33:1-34:1 at <b>Ex. 2</b>
4	37	SS Cortez discussed what he found at the scene with ASM Garcialazo and they inspected the scene together.	SS Cortez: 33:1-16 at <b>Ex. 2</b>  ASM Garcialazo, 49:24-50:23 at <b>Ex. 4</b>
5	38	After conducting the investigation, ASM Garcialazo completed an incident report.	ASM Garcialazo, 51:1-3 at <b>Ex. 4</b>  Walmart incident report created by ASM Garcialazo, <b>Ex. 6</b>
6	39	As part of ASM Garcialazo's training he was trained to fill out the report as accurately as possible.	Garcialazo, 51:11-14 at <b>Ex. 4</b>
7	40	As part of his investigation ASM Garcialazo believed one of his duties was to determine how the incident happened.	ASM Garcialazo, 51:19-22 at <b>Ex. 4</b>
8	41	It was important to ASM Garcialazo to memorialize what he had determined happened as accurately as possible.	ASM Garcialazo, 52:4-8 at <b>Ex. 4</b>
9	42	The information ASM Garcialazo inputted into the incident report was done either on the day of the incident or shortly thereafter.	ASM Garcialazo, 53:4-7 at <b>Ex. 4</b>
10	43	ASM Garcialazo wrote on the incident report that "a can of dog food fell off top stock."	Walmart incident report created by ASM Garcialazo, <b>Ex. 6</b>
11	44	When filling out the incident report ASM Garcialazo put the number "2" next to the question "stacked how many high."	Walmart incident report created by ASM Garcialazo, <b>Ex. 6</b>
12	45	As part of ASM Garcialazo's	ASM Garcialazo, 56:19-25 at <b>Ex. 4</b>

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1		investigation nothing led him to believe that anything other than a	
2		can falling from the top shelf	
3		stacked one on top of the other	
4		caused Mr. Blackburn's injury.	
5	46	The photographs taken by SS	Compilation of photos taken by SS
6		Cortez show that the same Pedigree	Cortez— <b>Ex. 7.</b>
7		Chicken Dog Food can which fell	
8		and struck Mr. Blackburn can be	
9		seen on the top shelf moments after	
10		the incident.	
11	47	If merchandise is stacked properly	SS Cortez, 19:14-20:6 at <b>Ex. 2</b>
12		on displays its does not fall.	Employee Zarco, 14:1-5 at <b>Ex. 3</b>
13			ASM Garcialazo, 57:21-58:10 at <b>Ex. 4</b>

DATED: July 15, 2019

CARPENTER, ZUCKERMAN & ROWLEY

By:

  
HAYTHAM FARAJ  
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Attorneys for Plaintiffs,  
John Blackburn and Diane Blackburn

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**CERTIFICATE OF SERVICE**

I hereby certify that the following document:

Was served on this date to counsel of record:

Janice Walshok, Esq.

PETTIT KOHN

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***Attorneys for Defendant, Walmart, Inc.***

by means of:

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EXECUTED on July 15, 2019 at Beverly Hills, California.

*Stephanie Herrick*

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